IN THE HIGH COURT OF BOMBAY AT GOA

Writ Petition No.355/2001.

i) Smt. Ratnamala P. P. Khanolkar,
(deceased, through her legal heir)
Primary School Teacher, Tiny Tots
School Dhavali-Ponda-Goa,
(a) Aakanksha Alias Aairya Pradeep
Prabhu, minor through natural
guardian Shri Pradeep Prabhu.

ii) All Goa Private Schools,
Pre-Primary and Primary Teachers
Association, having its Office at
S-5, Santimano Mansion, Gogol-Margao .. Petitioners.

Versus

i) Chairperson,
Shri Shantadurga Shiksha Samiti,
Kavalem-Ponda-Goa.

ii) Director of Education having
his office at Education Department,
18th June Road, at Panaji Goa.

iii) Smt. Asha Naik, Tiny Tots,
Shri. S. S. Samiti,
Dhavali-Ponda-Goa.

iv) Smt. Sulochana Borker,
Tiny Tots School,
Dhavali-Ponda-Goa.

v) State of Goa through the
Secretary of Education having its
office at Secretariate, Panaji.

vi) Shri. Dilip Borkar,
H. No.291/1, Near Forest
Respondents.
Nursery, Ponda-Goa. .. Respondents.

Mrs. S. S. Naik,Advocate for the petitioners.

Mr. S. S. Kantak, Advocate with Ms. Rakhi Chodankar, Advocate for the respondent No.1.

Mr. Nitin Sardesai, Advocate for the respondents No.3,4 and 6.

Mr. Guru Shirodkar, Addl. Govt. Advocate for the respondents No.2 and 5.

Coram :- R. M. S. KHANDEPARKAR, &
R. S. MOHITE, JJ.
Date : - 21st August, 2007.

ORAL JUDGMENT **:** (PER KHANDEPARKAR, J.)

Heard the Advocate for the petitioner. The petitioner is seeking direction to the Government for quantifying the arrears payable to the petitioner from June 1992 till the date of the death of the petitioner No.1 and further to take effective steps for payment thereof by the respondents No.1 & 2 and also direction to the respondents No. 1 & 2 to make the said payment in terms of quantification of arrears, to be made by the Government.

It is the case of the petitioner that the petitioner was appointed as teacher in the school run by the respondent No.2 with effect from June 1992. When the school reopened after the summer vacation, in June 1993 the petitioner was not permitted along with two other teachers from discharging her duties as teacher in the institution of the respondents No. 1 & 2. The petitioner therefore, made necessary representation and also filed appeal before the Administrative Tribunal against the decision of respondents No. 1 & 2 to prohibit the petitioner from discharging her duties. It was appeal No.9/1994 which came to be

allowed holding that termination of services of the petitioner to be bad in law and directing the respondents No. 1 & 2 to pay to the petitioners her salary from December, 1992 in the prescribed scale after deducting salary @150/- per month. There was also direction to the Director of Education to prepare the seniority list of the petitioner along with other two teachers. Allegedly, there was failure on the part of the respondents to comply the said directions issued by the Administrative Tribunal under the said order in the said appeal, present petition came to be filed seeking the following reliefs.

> "The Petitioner therefore prays that their Lordships be pleased to
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> (a) Issue a Writ or Mandamus to quash and set aside the Seniority list prepared by the Respondent Nos. 2 & 3 and declare the Petitioner to be 2nd Order of Seniority.
>
> (b) Issue a Writ or Mandamus to release the grants/salary to the Petitioner in the prescribed Scale of pay w.e.f. The date of appointment, 8.6.1992 subject to adjustment on the basis of Due and Drawn Statement of Salary.
>
> (c) Issue a Writ of Mandamus that pending the hearing and disposal of this petition the Respondent Nos. 1 & 2 continue the services of and payment of salaries to the petitioner.
>
> (d) For such other relief as their Lordships deem fit in the nature and circumstances of the case."

When the matter came up for hearing, the learned Counsel for the petitioner stated that the petitioner No.1expired on 28th June, 2005 and therefore, the relief in the nature of prayer clause (a) does not

survive and therefore, the petitioner is not pressing for the said relief.

Drawing our attention to the unreported decision in the matter of Writ Petition No.361/2001 delivered on 1st July 2002 by Division Bench of this Court, in the matter of *Smt. Sangita and another Versus Manager, Tiny Tots School and others,* the learned Counsel appearing for the petitioner submitted that the case of the petitioner is similar to the one which was dealt with by this Court in the said Writ Petition No.361/2001 and therefore, applying same principal, which was applied in the said matter, to the case of the petitioner, the respondents should be directed to quantify the liability of respondents No. 1 & 2 and to effect recovery thereof to pay the same to the legal heir of petitioner No.1.

The respondents on the other hand submitted that the case of the petitioner is not similar to the case of one *Smt. Sangita and another Versus Manager, Tiny Tots School and others,* in Writ Petition No.361 and further stated that the petitioner No.1 had not rendered any service from June 1993 and question of granting any salary for the period from June 1993 onwards does not arise.

As far as the issue regarding the arrears of salary is concerned, undoubtedly, the Tribunal has directed the payment of salary to the deceased petitioner from December 1992 onwards after deducting the salary of Rs.150/- per month which are already paid to the petitioner while she was in service. It is true that the order passed by the Tribunal does not disclose the period for which the amount of salary is to be calculated and paid to the petitioner. It is equally true that the order of the Tribunal has not been challenged by any of the respondents in the matter. In other words, the directions for payment of salary from

December, 1992 in the prescribed scale after deducting the salary @ 150/- per month has attained finality except about the date till which amount of salary is to be paid to the deceased petitioner.

To the specific query to the learned Counsel appearing for the petitioner as regards the letter of appointment of deceased petitioner, she could not gave any satisfactory reply nor the petition discloses any copy of appointment letter having been placed on record. It was sought to be contended on behalf of the petitioner that since the appointment of the petitioner is of 1992 she became permanent employee since June 1994. The record placed before us nowhere discloses that the deceased petitioner was selected after following regular procedure for selection in accordance with the provisions of law nor it discloses any letter of appointment having been issued to the petitioner disclosing that she was appointed on permanent basis. The learned Counsel appearing for the petitioner has not been able to point out any provisions of law which provides for deemed status of permanency. Once the employee is appointed as teacher in any private school in Goa it is well settled law that unless there is specific provision in the letter of appointment or statutory provision regarding deemed permanency on completion of the period of 2 years of employment, the employee cannot claim to have become permanent employee. It all depends on the terms of appointment. Unless the terms of appointment specify about the same, no inference can be drawn that an employee becomes a permanent employee merely because he has completed two years in the service. Being so, unless a case is made out to the effect that even after June 1993 on having become permanent employee, the petitioner was entitled to be in service, question of directing the respondents to make the calculation about the salary after June 1993 does not arise. Admittedly the services were rendered by the petitioner

up to May 1993. Being so, though the period for which amount payable to the petitioner, has not been specified under the order passed by the Tribunal, however, in the facts and circumstances of the case, it cannot be beyond May 1993.

In the result, therefore, a direction which can be issued to the Government to ascertain the liability regarding the salary arrears payable to the deceased petitioner, is for the period expiring in May 1993 from the date as directed in the order passed by the Administrative Tribunal.

As regards the request for direction to take effective steps for recovery of salary amount payable to the deceased petitioner, undisputedly, the petitioners have alternative efficacious remedy in form of execution proceedings and therefore, question of issuing direction in writ jurisdiction to the Government to recover the said amount does not arise. Undisputedly, the amount which would be payable to the deceased petitioner would not constitute part of grant-in-aid. Therefore, question of directing the Government to recover the said amount does not arise. In the result, petition partly succeeds. Government is directed to quantify the amount of salary payable in the prescribed scale to the deceased petitioner for the period specified herein above and rule is made absolute accordingly with no order as to costs.

R. M. S. KHANDEPARKAR, J.

R. S. MOHITE, J.

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